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UNITED STATES SUPREME COURT

ELIZABETH MILLS,

Plaintiff & Appellant

vs.

SUPERIOR COURT OF ALAMEDA COUNTY, HIGHLAND HOSPITAL, AND THE OAKLAND SHERIFF'S OFFICE

Defendants & Appellees.

PETITION FOR CERTIORARI

Elizabeth Mills
729 Mason Street, #53
San Francisco, Calif. 94108

acting in propria persona

IN THE SUPREME COURT
OF THE UNITED STATES

Elizabeth Mills Plaintiff & Appellant vs. Superior Court of Alameda County, Highland Hospital, and the Oakland Sheriff's Office Defendants & Appellees.	PETITION FOR CERTIORARI

To the Honorable Chief Justice Burger, and Honorable Justices Blackmun, Brennan, Douglas, Marshall, Powell, Renquist, Stewart, and White:

Petitioner, plaintiff and appellant in the above entitled case, has been unable to get her law considered by the State courts, and, therefore, seeks a writ of certiorari.

A. OPINIONS OF COURTS BELOW

1. In This Case

Said cause came before the District Court of Appeal of the State of California, First Appellate District, Division Four, which court filed its opinion on September 24, 1973 (see Exhibit I of this Petition).

Petitioner subsequently petitioned for a hearing in the Supreme Court of the

State of California, and her petition was denied on November 21, 1973.

2. In Related Cases

Mills vs. State of California, Agnews State Hospital and Napa State Hospital -- said cause came before the District Court of Appeal of the State of California, First Appellate District, Division Four, which court filed its opinion on May 29, 1968. Petitioner subsequently petitioned for a hearing in the Supreme Court of the State of California, and it was denied.

Mills vs. Small -- said cause came before the District Court of Appeal of the State of California, First Appellate District, Division One, which court filed its opinion on May 15, 1970. Petitioner petitioned for a hearing in the Supreme Court of the State of California which was denied, and she subsequently removed her case to the federal court. The United States Court of Appeals for the Ninth Circuit filed its opinion on August 8, 1971, and

petitioner subsequently petitioned for a writ of certiorari in that case, her petition being #71-466.

For Comments and Opinions on these cases, see Appellant's Opening Brief - Appendix.

B. JURISDICTION OF UNITED STATES SUPREME COURT

The judgment sought to be reviewed was rendered by the Court of Appeal of the State of California, First Appellate District, Division Four, on September 24, 1973. Petitioner filed a Petition for Rehearing in said court, and it was denied on October 10, 1973. Petitioner then filed a Petition for Hearing in the California Supreme Court, which was denied on November 21, 1973; and this petition is being filed within the 90 day time limit provided by 28 U.S.C. 2101 (c).

Petitioner claims jurisdiction pursuant to 28 U.S.C. 1257 (3).

C. QUESTIONS FOR REVIEW

The main question seems to be whether or not a conspiracy is bigger than an individual's rights, since petitioner believes and contends that part of the conspiracy she alleged never

ended, and it is causing her not to be able to get her law considered.

The legal questions involved are:

1. Whether the State court ruling, which failed to consider petitioner's law, deprived her of that part of her right to due process of law that requires the law not be arbitrary and capricious.

2. Whether petitioner's cause of action for breach of contract is barred by (a) res judicata, (b) failure to comply with the tort claims statutes, or (c) judicial immunity.

D. CONSTITUTIONAL PROVISIONS INVOLVED

1. United States Constitution, Article 14§1, and California Constitution, Article 1§16 (3) which provide that no person shall be deprived of life, liberty, or property without due process of law.

2. United States Constitution, Article 1§10 (1), and California Constitution, Article 1§16(4) which provide that no bill of attainder, ex post facto law, or <u>law impairing the obligation of contract</u>

shall ever be passed.

E. STATEMENT OF FACTS

Because of a conspiracy appellant was falsely imprisoned in Agnews State Hospital, Agnews, California, and later at Napa State Hospital, Imola, California (she was neither legally admitted nor legally committed), and she was injured by a breach of contract, and numerous tort wrongs.

In July 1954, as part of the conspiracy, appellant was transferred from a hospital in San Mateo County (where she was 1/2 hour or less) to Agnews State Hospital without cause and without an examination; and then, in furtherance of the conspiracy she was committed by the Superior Court of Alameda County without being in the county.

In this action appellant is seeking damages and equity against the public entities in Alameda County who, without jurisdiction, had appellant committed to Agnews State Hospital without her right to due process of law, and without any knowledge of her physical or mental condition (see Exhibit II of this Peti-

tion).

Appellant was sent a Discharge from Napa State Hospital on April 17, 1963. On May 3, 1963 appellant wrote the hospital stating she still wanted her health handled right, and on May 9, 1963 her letter was acknowledged, with her request to get her health handled right ignored. Appellant then, on March 18, 1966, filed her original complaint against the State of California, Agnews State Hospital, Napa State Hospital, and John Does 1 through 50,000 in the Superior Court of the State of California in and for the City and County of San Francisco, and it was later changed to the Superior Court of California for the County of Napa.

F. STATE COURT PROCEEDINGS

1. That petitioner was deprived her right to due process of law wasn't raised until her Petition for Hearing in the Supreme Court (see PFH - page 3), since she didn't realize until then that she couldn't get her law considered, however, her specific complaints were raised earlier, and are as follows:

Regarding Equity

Since per 30 Corpus Juris. Sec., page 873 - Equity (Fraud)

"courts of equity have inherent jurisdiction to relieve in all cases of fraud"

and since all three of petitioner's requests for equity are for relief from fraud, and such relief is not barrable by failure to file a timely claim or other technicality, she should have had a right to relief in each instance (see AOB - page 9, ARB - page 2, and PFH - pages 4-5), yet petitioner was unable to get same considered.

As to each individual request,

a. To have the Court Commitment in Alameda County declared null and void:

Petitioner pointed out in a Response to Demurrer in the trial court (C.T. 55) that per Section 473 of the Code of Civil Procedure (Deering's Codes, page 220), and the cases therein, a judgment void on its face may be vacated on motion made at any time.

Petitioner also pointed out in her Opening Brief - page 9, and in her Petition for Rehearing - page 2, that per Western Title Guaranty Co. vs. Sacramento & San Joaquin Drainage District (1965) 235 CA2 815, there was three years to correct a mistake in a deed, and her case has been filed within the three year time limit.

b. To have petitioner's aunt's estate checked out for fraud or mistake:

Petitioner requested this before she accepted the $3000.00 left her (see RRB 4), and she pointed out in her Response to Demurrer (C.T. 55) that per 18 Calif. Juris. 2d, page 144, fraud and mistake are grounds for equitable relief, and this type of relief is not governed by the tort claim statutes.

Petitioner also points out that she believes there is a lot of falseness in the law in this State, and she would like this noted particularly by the Honorable Renquist.

c. For a remedy for getting petitioner's

physical health handled adequately.

This is the most important request to petitioner since she still suffers materially from a physical condition she developed in Agnews State Hospital; and, her right to same was raised in Appellant's Response to Demurrer (C.T. 55), in Appellant's Opening Brief - pages 9-10, and in Appellant's Reply Brief - page 2.

Regarding the Breach of Contract

See below.

Regarding Answers to Interrogatories

Petitioner's interrogatories were filed pursuant to Code of Civil Procedure 2030, however, she never received the answers or any other filing within the 15 days provided for by the statute, and, when she attempted to get the court to order defense to provide her with answers, she was ignored. See Appellant's Opening Brief - page 2, 11 and 12; Appellant's Petition for Rehearing - pages 3 and 4; and Appellant's Petition for Hearing in the California Supreme Court - page 5.

2. The breach of contract was originally presented in the case Mills vs. the State of California, et al, and it was argued that there was no discharge of said contract. However, petitioner's law and arguments were ignored and she was told that because in a wrongful death case (Moxon vs. County of Kern (1965) 233 CA2 393) there was no breach of contract, there was no breach of contract in her case (see AOB - Exhibit I, page 5).

Petitioner then again accented her breach of contract in this case, since, notwithstanding the ruling in Mills vs. the State of California, et al, the theory fits her facts, and because she needs the equitable relief, i.e. a remedy for getting her physical health handled.

She pointed out in her Response to Demurrer (C.T. 24) that per Government Code section 814 the claims statutes do not apply to breach of contract. She also pointed out in her Opening Brief, page 6, that where a person bargains to get his

health handled there is an implied contract in absence of a written one; on page 7 that per Souza vs. McCue Construction (1962) 57 C2 508, where there is a fraudulent breach of contract the State or other governmental agency is liable as a private person, i.e. per the three year statute of limitations; and, also on the same page, that per 30 Cinn. Law Review, 184, breach of contracts and other federally guaranteed rights cannot be impaired by State procedure; yet her breach of contract, which is not barred by res judicata per Restatement Judgments 94, is not barrable by failure to file a timely claim per the above, and certainly cannot be barred by judicial immunity since the county entities acted without jurisdiction, was not considered.

G. REASONS FOR WRIT

Petitioner seeks this writ pursuant to Supreme Court Rule 19 (1)(a) because the State Courts have deprived her of the following federally guaranteed rights:

1. By deliberately and intentionally re-

fusing to consider petitioner's law, they deprived her of her right to due process of law.

2. By refusing to consider the breach of contract, they deprived her of her constitutional right to relief from same.

CONCLUSION:

Wherefore, because petitioner did not get her law considered in the State courts, and to prevent a miscarriage of justice, she respectfully requests a writ of certiorari.

Petitioner points out that this is the second time she has paid your court $100.00, and she thinks that ought to give her a right to have her case considered.

Respectfully submitted,

Elizabeth Mills
acting in propria persona

Date: February 9, 1974

TABLE OF AUTHORITIES

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Cases

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Other References

18 Calif. Juris. 2d, page 144 ---------- 8
30 Cinn. Law Review, page 184 ---------- 11
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Restatement, Judgments 94 ---------- 11

Exhibit I

COPY

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

FILED

SEP 24 1973

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk

By _____ Deputy

ELIZABETH MILLS,

Plaintiff and Appellant,

v.

SUPERIOR COURT OF ALAMEDA COUNTY, HIGHLAND HOSPITAL, and the OAKLAND SHERIFF'S OFFICE,

Defendants and Respondents.

1 Civil No. 31923

(Sup. Ct. No. 25553)

THE COURT:

Appellant noticed her appeal from the Order Sustaining Demurrer Without Leave to Amend. The order sustaining a demurrer is interlocutory and not appealable, and we treat the appeal as one from the judgment subsequently entered. (Collins v. City & Co. of San Francisco (1952) 112 Cal.App.2d 719, 722.)

This action represents another attempt by appellant to litigate her commitment in 1954. In Mills v. Small (1 Civ. 27116), Division One of this court held that appellant's action was barred by her failure to comply with the claims statute. That action is res judicata with respect

to any cause of action which necessitates that a claim be filed pursuant to section 911.2 of the Government Code. The complaint in the instant action also establishes that appellant is barred for failure to file a timely claim. (Moyer v. Hook (1970) 10 Cal.App.3d 491.)

Assuming arguendo that appellant was disabled until the date of her release from the commitment (Code Civ. Proc., § 352), and that her causes of action, if any, did not require that a claim be presented to and acted upon by the public entity before she commenced her suit (Gov. Code, § 901), appellant nevertheless has failed to initiate her action within the appropriate time for actions on a contract or in equity. (See, e.g., Code Civ. Proc., § 339, subds. 1, 2; § 340, subd. 3; and § 343.) It must also be noted that appellant's contention that the claims statute is unconstitutional is without merit. (Wall v. Sonora Union High Sch. Dist. (1966) 240 Cal.App.2d 870, 873.)

Appellant's causes of action, if any, against the superior court are barred by judicial immunity. (Gov. Code, § 821.6; Watson v. County of Los Angeles (1967) 254 Cal.App.2d 361, 363; Fish v. Regents of Univ. of Cal. (1966) 246 Cal. App.2d 327.)

Appellant is not entitled to answers to interrogatories. While it is firmly established that orders relating to discovery are not appealable (Southern Pacific Co. v. Oppenheimer (1960) 54 Cal.2d 784, 786), the record before us fails to show that any order pertaining to the interrogatories was

made. Subdivision (a) of section 2030 of the Code of Civil Procedure provides in part: "Any party may file and serve upon any other party written interrogatories to be answered by the party served . . . ." Judgment in favor of respondents and against appellant having been entered without appellant having taken any action to compel answers to her interrogatories (Code Civ. Proc., § 2034, subd. (a)), the question is moot for there is no "party" before the court to answer.

Judgment affirmed.

Exhibit H

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA

No. 25409

The People for the Best Interest and Protection of Elizabeth Alice Mills

as a Mentally Ill Person, and Concerning Reginald M.Mills and

Respondents.

JUDGMENT OF MENTAL ILLNESS AND ORDER FOR CARE, HOSPITALIZATION OR COMMITMENT

The person named July 21,1954, showing that Elizabeth Alice Mills

is mentally ill, having been presented to the court on the 21st day of July, 19 54, and an order to the court issued thereon by a judge of the Superior Court of this County, and a return of the said order; and

And a further appearing that the provisions of Article 3 of Chapter 1, Part 1, Division 6 of the Welfare and Institutions Code have been complied with;

And a further appearing that Dr. H.P.Gibson, M.D. and Dr. L.E.Wells, M.D. two physicians duly appointed and qualified medical examiners of the county, have examined the alleged mentally ill person, and have made and signed the certificate of the medical examiners, which certificate is attached hereto and made a part hereof;

The witnesses who were sworn and examined were

Julia Mills and Reginald Mills

Now therefore, after examination and certificate made as aforesaid the court is satisfied and believes that Elizabeth Alice Mills is a mentally ill and dangerous person;

[redacted]

*(b) Of such mental condition that he is dangerous to [redacted] self or to the person or property of others, and is in need of supervision, treatment, care, or restraint.

It is ordered, adjudged and decreed

That Elizabeth Alice Mills is a mentally ill person and that he

[redacted]

*(c) be committed to the Department of Mental Hygiene for placement in a state hospital, to wit Agnews State Hospital at Agnews, California, or

*(d) [redacted]

It is further ordered and directed that H.P.Gibson, sheriff of this county, take, convey and deliver Elizabeth Alice Mills to the proper authorities of the hospital or state institution designated herein or by law as provided by law.

July 26, 19 54

James R. Agee
Judge of the Superior Court of the State of California in and for the County of Alameda

FILED
JUL 29 8:11 AM
[illegible]

CLERK'S CERTIFICATE

I [illegible]

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA

No. 25489

The People of the State of California on the Complaint of [illegible] Elizabeth Allen Mills

Person and Character [illegible] and [illegible]

NOTICE

[illegible] Elizabeth Allen Mills [illegible]

[illegible] Elizabeth Allen Mills [illegible]

ORDER FOR EXAMINATION OR DETENTION

The People of the State of California to [illegible]

[illegible] Elizabeth Allen Mills [illegible]

[illegible] Elizabeth Allen Mills [illegible]

[illegible] Elizabeth Allen Mills [illegible]

Dated July 22, 1964

Judge of the Superior Court

RETURN OF ORDER

I hereby certify that I received the above order for examination or detention and on July 22, 1964

[illegible] Elizabeth Allen Mills [illegible]

Dated July 22, 1964

Filed July 22, 1964

[illegible]

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA

No. 25409.

The People
For the Best Interest and Protection of
ELIZABETH ALICE MILLS, An Alleged Mentally Ill Person,
and Concerning
REGINALD M. MILLS, and
, Respondent.

Petition

REGINALD M. MILLS, residing at 1061 Market St., San Francisco (P.O.) El Cerrito, being duly sworn, deposes and says: That there is now in the county, to the City or Town of Oakland, a person named ELIZABETH ALICE MILLS who resides at HIGHLAND HOSPITAL, and who is believed to be mentally ill and in need of supervision, care or treatment.

That the person is 24 years of age; that she is female (sex); and that she is single (single, married, widowed or divorced); and that her occupation is stenographer.

That the facts because of which petitioner believes that the person is mentally ill and in need of supervision, care or treatment are as follows: That she is in Oakland in the county on the 21st day of July, 1944.

and for the past two months, patient has been extremely nervous, feels that everyone is against her, that someone is following her and watching her every move. Patient graduated from State College in L.A. In June and went to Los Angeles to work for the Imperial Insurance Co. After working for them one month they had to discharge her due to the fact that she thought there were hidden microphones all over the office and was continually looking for them and was suspicious of everyone. Also, patient tore the springs apart in the room where she was staying as the said the springs were all wired for sound. Since returning home from L.A. patient just sits and stares at the blank walls; when she is spoken to she jumps; says she cannot understand why she is so confused That person's nearest of kin or friend is FATHER and why someone is following her all the time. Patient is in need of psychiatric treatment.

That petitioner believes that said person is an mentally ill
(a) as to be in need of supervision, care or treatment under the provisions of this act,
and/ or
(b) as to render her dangerous to herself or to the person or property of others.
(Strike out (a) or (b) whichever is not applicable)

That the person responsible for the care, support and maintenance of the mentally ill person, and their relationship to the person are, as far as known to the petitioner, as follows:

REGINALD M. MILLS (Name) 1061 Market St., S.F. (Address) FATHER (Relationship)

STANLEY H. KINGLAND (Name) 2007 Marin Ave., Berkeley (Address) UNCLE (Relationship)

WHEREFORE, petitioner prays that examination be made as directed by the laws of the mental health of ELIZABETH ALICE MILLS alleged to be mentally ill, and that such person be taken for the law interest and protection of said ELIZABETH ALICE MILLS to an appropriate hospital, care and treatment as may be necessary and provided by law.

Reginald M. Mills
Petitioner

Subscribed and sworn to before me this 21st day of July, 1944.

Petition filed July 21st, 1944.
JACK D. BLUE, County Clerk
By W. W. Vaughan, Deputy

Jno. R. Marks
Judge of the Superior Court in and for the County of Alameda, State of California.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA

No. 23459

The People For the Best Interest and Protection of Elizabeth Allen Hills

as a Mentally Ill Person, and Concerning Reginald Hills and

Respondents

CERTIFICATE OF MEDICAL EXAMINERS

We, the undersigned Medical Examiners of the County of Alameda, duly appointed and qualified as such, do hereby certify that we have examined Elizabeth Allen Hills, alleged to be mentally ill, and that we have a belief, all of the Superior Court of the State of California, and in the County of Alameda, at the hearing on the petition in this matter, and have heard the testimony of all witnesses, and as a result of the examination have arrived at and do hereby state the result to be the following facts concerning the alleged mentally ill person:

Name Elizabeth Allen Hills Address

Age 24 Sex F Married Status single (Occupation) Housekeeper

Religious Belief

Pertinent Case History Insecurity & suspicious of boy friend, Has auditory hallucinations, Thinks he is persecuted, Thinks he is Rd and evil. Acts in bizarre confused manner

General Physical Condition and Present Mental Status Physically OK Mentally paranoid

Laboratory Report Neg results

Terms or Diagnosis of Mental Health Schizophrenia

Recommendations for Disposition or Supervision, Treatment and Care Hospital care

Reasons for the recommendations

Dated July 21, 1944

Justin McCarthy, M.D.

Physician

M.D.

M.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ALAMEDA

No. 25479

The People For the Best Interest and Protection of Elizabeth Alice Mills

on a Mentally Ill Person, and Concerning Reginald R. Mills

and

, Respondent.

ORDER FIXING TIME AND PLACE FOR HEARING AND EXAMINATION

The above named Elizabeth Alice Mills, having been apprehended

on July 21, 1964, under an order for detention, upon a petition of mental illness,

issued by a Magistrate of the County of Alameda, on July 21, 1964, made by

Reginald R. Mills, on July 21, 1964, and the said alleged mentally ill

person having been, then and there, duly filed that she was charged with being a mentally ill person and having been

further apprised of her rights to demand a hearing on such charge and to be represented by counsel, and to produce witnesses in relation to such charge, and to have subpoenas issued to compel the attendance of witnesses, and a demand having been made for a hearing according to the provisions of Section 5048 of the Welfare and Institutions Code;

IT IS THEREFORE ORDERED that said alleged mentally ill person appear before this Court, Department No. 3 thereof, in the Alameda County Hospital situated at Fairmount Avenue and Valle Vista Place, in Oakland in said Alameda County, on July 28, 1964, at 8:15 o'clock A.M. for a hearing and examination on said charge, and that said alleged mentally ill person be detained at the Alameda County Hospital until such hearing and examination.

It is further ordered that the Clerk of this Court issue all necessary subpoenas in connection with the said hearing and examination; that a copy of this order be served on said alleged mentally ill person; and that a copy of this order be served on

, Petitioner,

and

, Attorney for Petitioner.

Done in open Court July 21, 1964.

Marvin Sherwin

Judge of the Superior Court of the State of California in and for the County of Alameda